

W-02824A-07-0388

ORIGINAL



0000083752

ARIZONA CORPORATION COMMISS
UTILITY COMPLAINT FORM

4700

Investigator: Al Amezcua

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Respond Within Five Days

Arizona Corporation Commission

Opinion No. 2008 - 67650

Date: 4/8/2008

DOCKETED

APR -8 2008

Complaint Description: 08A Rate Case Items - Opposed
N/A Not Applicable

DOCKETED BY	ME
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Complaint By: First: Jerome Last: Reid

Account Name: Jerome Reid

Home: [REDACTED]

Street: [REDACTED]

Work: (000) 000-0000

City: [REDACTED]

CBR:

State: AZ Zip: 86305

is:

Utility Company: ICR Water Users Association

Division: Water

Contact Name: Robert Busch

Contact Phone: [REDACTED]

Nature of Complaint:

4/8/08 RECEIVED E-MAIL FROM MR. REID

From: Jerome Reid [REDACTED] On Behalf Of Jerome "Skip" Reid
Sent: Monday, March 31, 2008 7:31 AM
To: 'gleason-web@azcc.gov'; 'mayes-web@azcc.gov'; 'mundell-web@azcc.gov'; 'pierce-web@azcc.gov'; 'hatch-web@azcc.gov'
Subject: FW: DOCKET NO. W-02824A-07-0388, ICR Water Users Assn. Rate Case

Commissioners:

I have attached the emails I mentioned in the first email I sent. They are attached to this email. Please accept my apologies for any confusion.

Jerome "Skip" Reid

From: Jerome Reid [REDACTED] On Behalf Of Jerome "Skip" Reid
Sent: Monday, March 31, 2008 7:27 AM
To: 'gleason-web@azcc.gov'; 'mayes-web@azcc.gov'; 'mundell-web@azcc.gov'; 'pierce-web@azcc.gov'; 'hatch-web@azcc.gov'
Subject: DOCKET NO. W-02824A-07-0388, ICR Water Users Assn. Rate Case

Chairman Gleason and Commissioners Mayes, Mundell, Pierce, and Hatch-Miller:

I have been a resident of Inscription Canyon Ranch (ICR) since October of 2004 when my wife and I moved into our new home. While our home was under construction (April of 2003 to October of 2004) I took an interest in the community, including the ICR Water Users Association (the Company). That interest was initially manifest

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in attending and contributing to discussions at Company Board meetings. After listening to the various discussions at these meetings, it became apparent to me that the Board members of the Company were not informed about the Company, the regulatory environment in which it operated, any of the controlling documents, and were blatantly and regularly deferring to the wishes of the Talking Rock Ranch developer, i.e., Harvard/Simon LLP (the Developer), instead of discharging their responsibilities as independent Board members and consistent with statutes and regulatory rulings.

After one Company Board meeting in 2004, I received a call from Earl Cummings, a Director and Officer of the Water Company at the time. Mr. Cummings questioned my contributions at the meeting, specifically that the Board needed to stop deferring to the Developer in all their decisions and assert their independence. For the next half hour Mr. Cummings regaled me with his fear that the Developer would sue the Company for failing to act in a manner consistent with the Developer's express wishes. I tried to disabuse Mr. Cummings of his fear and suggested that if the Developer was not prepared to play by the rules (e.g., comply with Commission Order 64360), there might be little the Board could do to avoid litigation short of abdicating their independence and fiduciary duty to all of the residents served by the Company.

In the fall of 2004, I decided, with encouragement from other ICR residents, to run for an open seat on the Company Board. My mailed nominating ballot did not arrive in a timely fashion, so I sought approval from the Board to run as a write-in candidate. Jim Edens, Chairman of the Board and President of the Company at the time (he signed the Well Agreement with the Developer), approved my write-in candidacy. I sent an email to ICR residents announcing my intention to run as a write-in candidate for one of the open Board seats, stating that my mailed nominating form had not been handled properly. In response to that email, Mr. Edens sent an email to all the ICR residents taking great exception to my suggestion that anything untoward had been done by the Company with my mailed nomination form (I did not make any such suggestion) and recommending that no one vote for me. I have attached a copy of these emails to this one. I did not win a seat on the Board.

Based on Mr. Edens' and Mr. Cummings' behavior, I became convinced that only those who were willing to sign up for the program, i.e., defer to the Developer and agree with Messrs. Edens and Cummings on issues before the Board, would be considered worthy candidates for a Board seat. The treatment I received from these two in seeking a Board seat ironically did not discourage them from seeking my counsel in subsequent Board meetings about issues before the Board. For example, when discussing the Well Agreement and implementing it, Mr. Edens asked me my opinion as an attorney and someone who had read the various Company agreements. It was clear from the discussion that the Board members neither read the Agreement nor understood its terms. This added to my concern whether the Board was doing anything to represent all the residents or was simply deferring to the Developer.

I have read all the substantive filings in the referenced rate case and agree with the conclusions and recommendations of the Utility Division Staff. I am not surprised that the Company Board and the Developer undertook to avoid complying with the Commission's Order 64360 by entering into the Well Agreement. There is no evidence that the Company Board ever disagreed with the Developer. In fact, there is reason to believe that the Board fundamentally abdicated its duties and responsibilities. At one point in the last couple of years, the Board called a meeting of residents to explain a proposal under consideration that would have divided the Company into two separate water companies, one serving the east side of Williamson Valley Road, i.e., Talking Rock Ranch and the Golf Course, and another to serve the west side of the road, i.e., Inscription Canyon Ranch and Whispering Canyon. I attended that meeting and listened to Mr. Cummings, Chairman of the Board at that time, offer an explanation of the proposal to split the Company. In the course of doing so, Mr. Cummings introduced an attorney in attendance, who happened to be the Developer's counsel. I asked who was providing legal counsel to and advising the Company Board. To my amazement, Mr. Cummings said that the Company Board was relying on the advice of the Developer's counsel! I questioned the prudence of not having independent counsel for this proposal and was dismissed with the comment that doing so would generate an unnecessary expense to the Company. I then requested financial forecasts for the Company and for the separate entities if the proposed split were to be implemented, not unlike what any routine commercial venture would be advised to generate to analyze such a transaction. I suggested that this information, at the very least, would be required for residents to make an informed decision about the proposal. Mr. Cummings said such

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information would be provided, but it never materialized and the proposal faded into the mist.

I am sure the Commission is aware of how precious our water resources are here in Arizona. Because my wife and I have made a significant investment in our home in ICR, at least in part in reliance on the representations made that there is a 100 year water supply to ICR, I take a personal interest in who is running the show for the Company and whether they appear to be making good decisions based on an informed understanding of all the facts and circumstances. I have concluded that the Company is not making good decisions that represent the interests of all the shareholders of the ICR Water Users Association. To the contrary, the Board is guarding carefully access to decision making that affects the Developer and the residents and is acting in deference to the Developer and making bad decisions.

I vigorously urge you to remove the current Board and approve a caretaker Board of Directors made up proportionately of residents from each of the communities served, i.e., Inscription Canyon Ranch (including the Preserve at the Ranch), Talking Rock Ranch, and Whispering Canyon. The proportionality would be based on the total number of residential water hook-ups in each community as a percentage of the total residential water hook-ups served by the Company. This caretaker Board would operate until new elections could be held for a new Board. Prior to holding these new elections, the by-laws for the Company should be amended to reflect this concept of proportionality, to permit the bylaws to be amended by a vote of all residents (only the Board can change the by-laws currently), and to provide term limits for members of the Board. I further recommend that any decision regarding splitting the Company be postponed until a new Board can determine whether such a change is in the best interests of all the residents.

Finally, I would like to express my appreciation to you and your staff for the excellent work that has been done in this rate case. I believe that my suggestions for changes in the Board and the way they are elected would go a long way towards correcting problems identified with the current Board.

Respectfully submitted,

Jerome Reid, MBA/JD/LLM
[REDACTED]

Two additional letters attached by Mr. Reid to his opinion via e-mail

11/11/04

Open Letter to ICR Residents -

My name is Jerome "Skip" Reid. For reasons I do not understand, my nomination as a Candidate for one of the three positions on the Board of Directors of the ICR Water Users Association was not processed properly and so my name does not appear on the Official Ballot that was mailed to all ICR Water User customers. I have consulted with Jim Edens, President of the ICR Water Users Association, and confirmed that I am eligible to run for a Board position on a write-in basis. That is what I have decided to do.

Therefore, when deciding which three candidates to vote for, please remember that there is an additional candidate to consider for one of the three (3) open Board positions:

Reid, [REDACTED]

Thanks for your consideration.

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11/16/04

Jim Edens' email to ICR residents:

When I returned on Sunday night I had quite a few e-mails regarding items relating to waterboard elections, management of the water users association, committee to select new management and other items concerning ICR. Several of these e-mails appeared to have the potential of creating controversy in the neighborhood and that concerned me a great deal.

The e-mail that was most disturbing was from Jerome "Skip" Reid, who stated that, "my nomination as a Candidate for one of the three positions on the Board of Directors of the ICR Water Users Association was not processed properly...." I am completely convinced that "Skip" is mistaken, as his nomination was never received by anyone on the Board and it is wrong for him to imply that any member of the Board would intentionally not include anyone on the ballot. I have talked to other members of the board and they also are concerned that anyone would imply that any of their neighbors would try to "rig" the elections for a volunteer position in the neighborhood. If Skip in fact submitted a nomination on time then it must have been lost in the mail and I am sorry for that.

I would urge everyone not to "write in" Skip's name for one of the positions on the Board at this time as I believe we need a board that can work together as a team for the benefit of the neighborhood.

Dayne Taylor, who is soon to be appointed to the Sewer Board has expressed a desire for Skip to fill the remaining position on that Board. Dayne has also stated that "Skip" and he were addressing the issues with the APS powerline. Dayne also stated in his recent e-mail to the ICR List that "Skip" would become part of the team to write the RFP for the new management of the water Association. "Skip" also wants to be a member of the water board.

Should we not encourage others in the neighborhood to participate---- -----??

The "tone" of the two e-mails that I received relating to Skips nomination really concerned me that we might be creating a controversial political environment in the neighborhood which I think would be very unfortunate. I hope that we will all work to have a close caring community.

Jim Edens

End of Complaint

Utilities' Response:

N/A

End of Response

Investigator's Comments and Disposition:

4/4/08 I received a call from Mr. Jerome Reid. He wanted to know why his opinion that he e-mail to all the Commissioners on march 31, 2008 was not docketed by now. He wished that the Commissioners would take his opinion very seriously. I advised Mr. Reid that I would look into this matter on his behalf and follow up.

4/4/08 I spoke with a few of the Commissioner aides, none of them had received or seen the e-mail. Mr. Reids' e-mail could not be located.

4/4/08 Phone call

I spoke with Mr. Reid and advised him that I could not locate a copy of his e-mail. I offered him to e-mail it to my attention and I would process his opinion. I provided him with my full name and e-mail address. He provided me with the same. He agreed to e-mail his opinion.

4/7/08 Phone call

I spoke with Mr. Reid and advised him that I did not receive his e-mail last Friday. He misunderstood our

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conversation. He would send it right away.

4/7/08 E-mail Mr. Reid
Good morning Mr. Reid,

I have not received your e-mail relating to the ICR case. Please respond back to this e-mail and attach your opinion. At which time I will enter it for the record and also send the necessary copies to Docket Control.

Thank you,

Alfonso Amezcua
Arizona Corporation Commission
Utilities Division
Consumer Services


4/7/08 E-mail from Mr. Reid

Al,

I see why my previous email did not make it to you (it's the syntax I used in your email address). I also have the originals of the emails that are attached to the email I sent to the Commissioners if you need me to forward those to you.

Jerome "Skip" Reid

4/7/08 E-mail received from Mr. Reid

Alfonso,

Please find below the email we have discussed. Thanks for your efforts to get this on the e-docket. I have originals of the attached emails if you would like for me to forward those to you.

On another issue relating to the same case, I noticed that ALJ Stern entered an order allowing a new intervener and suspending the calendar. Does that mean that the hearing scheduled for April 16 will not be held on that date? There are several of us from the ICR Water Users Association service area who plan to attend.

Thanks again for your help

Jerome "Skip" Reid

4/7/08 E-mail to Mr. Reid

Mr. Reid,

I received your e-mail to the Commission about half hour ago. I will enter it for the record and submit the copies to Docket Control.

Thank you,

Alfonso Amezcua

4/8/08 E-mail response to Mr. Reid

Good morning Mr. Reid,

I read the Procedural Order and I also checked with our legal staff. The Hearing is scheduled for April 16, 2008 at 9:30 A.M. If you wish to do so you can also call the Hearing Division to confirm the date and time. The

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number is 602-542-4250 or toll free at 800-222-7000 ask for the Hearing Division.

As per your request urging the Commission the remove the current Board and approve a caretaker Board of Directors made up proportionately of residents from each of the communities served. The Commission has jurisdictional authority over the water system operations, rates, tariffs, rules and regulations. Staff appreciates your comments and the interest taken on the proposed rate increase.

Thank you,

Alfonso Amezcua
Arizona Corporation Commission
Utilities Division
Public Utilities Analyst


End of Comments

Date Completed: 4/8/2008

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